

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
INFONXX CARRIER NEW YORK, INC.)
For a Certificate of Authority to)
Provide Telecommunications Services)
in Hawaii.)
_____)

DOCKET NO. 05-0085

DECISION AND ORDER NO. 22158

Filed Dec. 5, 2005
At 11:30 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2005 DEC -6 A 8:09

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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
INFONXX CARRIER NEW YORK, INC.)	Docket No. 05-0085
For a Certificate of Authority to)	
Provide Telecommunications Services) Decision and Order No. 22158	
in Hawaii.)	
_____)	

DECISION AND ORDER

By this Decision and Order, the commission grants INFONXX CARRIER NEW YORK, INC. ("Applicant" or "InfoNXX NY") a certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State") as a reseller and to provide operator and other telecommunications services as described in InfoNXX NY's Application, subject to certain conditions, as described herein.

I.

Background

A.

Procedural History

On April 7, 2005, InfoNXX NY filed its Application seeking a COA to provide telecommunications services in the State. The Application was filed pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5 and Hawaii Administrative Rules ("HAR") § 6-80-17.

Applicant served the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") with a copy of the Application. By initial Statement of Position filed on May 18, 2005 ("Initial Statement"), the Consumer Advocate informed the commission that it was unable to complete its review of Applicant's request since aside from the proposed tariff and updated financial statements that the commission requested through its letters dated April 21 and 29, 2005, Applicant had also failed to include in its Application: (1) a copy of Applicant's Certificate of Incorporation; (2) documentation indicating that Applicant received authorization from the Department of Commerce and Consumer Affairs to transact business in the State as a foreign corporation; and (3) documentation indicating that Applicant possesses the technical knowledge and expertise to provide the proposed services (collectively, "Certification and Expertise Documents"). After receiving an extension to file the documents,¹ Applicant filed its proposed tariff and updated confidential financial statements on May 31, 2005.²

By letter dated July 20, 2005, the commission advised Applicant to submit its Certification and Expertise Documents as initially requested by the Consumer Advocate in its Initial

¹Applicant requested an extension until May 31, 2005, to file its proposed tariff and updated financial statements in a letter dated and filed on May 20, 2005 ("Extension Request"). By commission letter dated May 23, 2005, the commission approved Applicant's Extension Request.

²The updated confidential financial statements were filed under Protective Order No. 21764, filed on April 21, 2005.

Statement within ten (10) days of the date of the commission's letter. On July 26, 2005, Applicant filed its Certification and Expertise Documents with the commission and served the same on the Consumer Advocate.

The Consumer Advocate filed its Supplemental Statement of Position on October 4, 2005 ("Supplemental Statement"), informing the commission that it does not object to the approval of the Application, subject to its tariff revision recommendations.³

B.

Applicant and Proposed Services

Applicant is a Delaware corporation with its principal place of business in Bethlehem, Pennsylvania. It is authorized to conduct business in the State as a foreign corporation. Applicant's ultimate parent company is InfoNXX, Inc. ("InfoNXX"). Applicant states that InfoNXX is the world's leading provider of directory assistance and enhanced information services. InfoNXX is said to provide services to wireless carriers, competitive local exchange carriers, and large corporate users of directory and information services on a wholesale basis.

Applicant proposes to provide InfoNXX and other telecommunications and information service providers with

³The Consumer Advocate noted that while InfoNXX NY submitted its parent's unaudited consolidated balance sheet dated March 31, 2004 and 2005; and a statement of consolidated cash flows for the period January 1, 2005 through March 31, 2005, on May 31, 2005, Applicant did not submit an updated income statement with its filing. See Supplemental Statement at 3.

wholesale transport services. Applicant does not intend to own its own telecommunications facilities, but plans to provide telecommunications services on a resold basis.

II.

Discussion

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a certificate of public convenience and necessity ("CPCN") from the commission.⁴ HAR § 6-80-18(a) states that:

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

Upon review of the Application, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as evidenced by the resumes of Applicant's

⁴On June 3, 1996, HAR chapter 6-80 took effect. HAR 6-80, among other things, replaces the CPCN with a COA for telecommunications carriers, and establishes procedures for requesting and issuing a COA.

corporate officers and the financial statements submitted in support of its Application. While the Consumer Advocate expressed concerns over Applicant's financial resources, it nevertheless recommended approval of the Application. We do not disagree with the Consumer Advocate that the concerns it raised over Applicant's financial resources do not appear to rise to the level of warranting denial of the Application.⁵

2. Applicant is fit, willing, and able to properly perform the telecommunications services proposed and to conform to the terms, conditions, and rules prescribed or adopted by the commission, as evidenced by Applicant's representations in its Application. Moreover, the commission's grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity to the terms, conditions, and rules prescribed or adopted by the commission as discussed below.

3. Applicant's proposed telecommunications services are in the public interest. The commission recognizes that additional service providers in the industry increase competition and provide the consumer with options in Hawaii's telecommunications market. As noted by the Consumer Advocate, Applicant's proposed services are in the public interest as "the introduction of effective competition in the telecommunications industry is desirable to achieve certain benefits that would not

⁵The commission notes that the Consumer Advocate expressed certain concerns with Applicant's financial fitness. However, those concerns did not rise to the level to justify a Consumer Advocate recommendation that the commission deny Applicant's COA request. See Supplemental Statement at 4-5 and 9.

be present in a monopolistic environment."⁶ Based on the foregoing, the commission concludes that Applicant should be granted a COA to provide resold intrastate services in the State and to provide operator and other telecommunication services as described in its Application.

Upon review of the Consumer Advocate's tariff revision recommendations, the commission finds them to be reasonable and proper. Moreover, the commission finds certain other tariff revisions to also be appropriate. Thus, the commission concludes that Applicant's proposed tariff should be revised as follows:

1. A Title Sheet as Page 1 of the tariff should be included with a statement describing the contents of the tariff similar to the following:

This tariff contains the description, regulations, and rates applicable to the telecommunications services provided by InfoNXX Carrier New York, Inc. (the "Company"), with principal offices at 3864 Courtney Street, Suite 411, Bethlehem, Pennsylvania, 18017. This tariff applies for services furnished within the State of Hawaii ("State"). This tariff is on file with the Hawaii Public Utilities Commission, and copies may be inspected during normal business hours, at the Company's principal place of business. In the event of a conflict between this tariff and State law, State law shall prevail.

2. *Original Page 8, Sections 6.2 through 6.5* -- These sections should be reviewed and revised, as necessary, to clarify the charges that may be assessed. For example, Section 6.2 appears to suggest that a customer might be charged for

⁶See Supplemental Statement at 6.

services that are not authorized. The language of this section appears to imply that Applicant may assess charges for unacceptable practices including those that can be deemed to be "cramming". Additionally, the proposed language in Section 6.3 suggests that a customer would receive directory assistance call completion ("DACC") charges for busy or uncompleted calls. However, based on tariff language set forth in Section 2.1.2, which defines how DACC charges will be determined, it is not clear why a customer would be assessed any DACC charge for busy or other uncompleted calls since there should be no signal that a call has been completed in either of these circumstances. Further, Section 6.3 appears to be inconsistent with HAR § 6-79-39(1)-(4) which outlines situations where the operator service provider is not allowed to assess a charge or must provide the customer with a refund; and, thus, should be amended accordingly. Moreover, Sections 6.4 and 6.5 should also be modified for clarity regarding charges, and consistency with HAR § 6-79-39(1)-(4).

3. *Original Page 8, Section 6.6* -- This section should also be amended for clarity since while Applicant requires prompt payment on the terms specified by the Company, Applicant failed to

specify the applicable methods and terms of payment. For example, Applicant has not established whether payment by mail will be acceptable.

4. *Original Page 9, Section 7.1* -- In compliance with the requirements of HAR § 6-79-28(5) and HAR § 6-80-107(1), the tariff should be amended by providing Applicant's customers a toll free number, to receive trouble reports twenty-four (24) hours a day and all other complaints during normal business hours.
5. *Original Page 9, Sections 8.1 through 8.3* -- These tariff sections should be amended to include the phrase "not in dispute for past due amounts" (or similar language), as applicable, consistent with the provisions of HAR § 6-80-102(a), which in short, states that when a billing dispute arises, the carrier may require payment of the undisputed amount of the bill.
6. *Original Page 11, Section 12.4* -- This section should be amended for compliance with HAR § 6-80-106, which clearly states when service can be terminated with and without advance customer notice. Additionally, to the extent advance notice is required before terminating service, Applicant should provide notice in accordance with HAR § 6-80-106(c) which, among other things,

requires the carrier to state the reason for service termination.

7. *Original Page 13, Section 4.1* -- This section should be amended to clearly state that service will be provided in a non-discriminatory manner. Applicant should insert a statement similar to the following:

Specialized rates or charges will be made available to similarly situated customers on a non-discriminatory basis.

Moreover, consistent with HAR §§ 6-79-38(b), 6-80-39, and 6-80-40, Applicant should make clear that contract services shall be provided subject to an applicable tariff filed with the commission for such services.

III.

Orders

1. Applicant is granted a COA to provide intrastate telecommunications services in the State as a reseller and to provide operator and other telecommunications services as described in its Application.

2. As a holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269; HAR chapters 6-79, 6-80, and 6-81; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

3. Applicant shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant's tariffs shall comply with the provisions of HAR chapters 6-79 and 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

4. Applicant shall conform its initial tariff to the applicable provisions of HAR chapters 6-79 and 6-80 by, among other things, incorporating the tariff revisions required under this Decision and Order, as applicable. An original and eight (8) copies of Applicant's initial tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

5. Within thirty (30) days from the date of this Decision and Order, Applicant shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 S. King Street, Room #103, Honolulu, HI, 96813.

6. Within thirty (30) days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$10.00, established pursuant to: (A) Act 50, adopted on May 7, 2003 (codified as HRS § 269-16.6); and (B) Decision and Order No. 21847, filed on May 31, 2005, in Docket No. 05-0088. (A copy of Order No. 21847 is attached hereto as Exhibit 1.) The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS

Administrator, NECA Services, Inc., 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

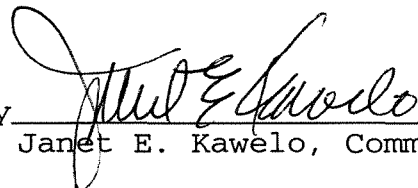
7. Failure to promptly comply with the requirements set forth in paragraphs 3 to 6, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii December 5, 2005.

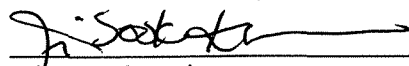
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (Excused)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

05-0085.eh

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting an Investigation)
into the Carrier Contribution)
Factor and Telecommunications)
Relay Services Fund Size for)
the period of July 1, 2005)
through June 30, 2006.)
_____)

DOCKET NO. 05-0088

DECISION AND ORDER NO. 21847

Filed May 31, 2005
At 10 o'clock A.M.

Karon Hight.
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
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Instituting an Investigation)
into the Carrier Contribution)
Factor and Telecommunications)
Relay Services Fund Size for)
the period of July 1, 2005)
through June 30, 2006.)
_____)

Docket No. 05-0088

Decision and Order No. 21847

DECISION AND ORDER

By this Order, the commission: establishes the Telecommunications Relay Services ("TRS") carrier contribution factor for the period July 1, 2005 to June 30, 2006 (the "Period"), at 0.0010, and establishes the projected TRS fund size for the Period, at approximately \$680,000.

I.

Background

By Order No. 21730, filed on April 12, 2005, ("Order No. 21370") the commission initiated the instant proceeding to examine whether to modify the TRS carrier contribution factor and fund size for the Period, established in accordance with Order No. 20193, filed on May 23, 2003, in

Docket No. 03-0058 ("Order No. 20193").¹ Specifically, in Order No. 21370, the commission proposed to continue the existing carrier contribution factor of .0010, established by Order No. 21049, filed on April 15, 2004, in Docket No. 04-0070. The commission also proposed to keep the projected TRS fund size, for the Period, at approximately \$680,000.

The commission served copies of Order No. 21730 on The Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") and Sprint, the parties to this proceeding, and mailed copies of Order No. 21730 to all chartered, certificated and registered telecommunications carriers, except payphone providers, at their mailing addresses on file with the commission to solicit written comments. Written comments to the proposals were accepted until May 6, 2005. As of the date of this Order, no written comments were filed with the commission on any of the commission's proposals.

II.

Background

On May 23, 2003, the commission issued Order No. 20193, in Docket No. 03-0058 which, among other things, ordered: (1) every telecommunications carrier providing intrastate telecommunications service in the State of Hawaii to contract

¹In Docket No. 03-0058, the commission selected SPRINT COMMUNICATIONS CO., LP ("Sprint") as the exclusive provider of intrastate TRS within the State of Hawaii ("State of Hawaii") from July 1, 2003 to June 30, 2006. See Decision and Order No. 20163, filed on April 30 2003. Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058.

with Sprint for the provision of telecommunications relay service, for the period beginning July 1, 2003 to June 30, 2006; (2) every carrier providing intrastate telecommunications service in Hawaii shall contribute to the TRS fund on the basis of gross operating revenues from the retail provision of intrastate telecommunications services during the preceding calendar year, consistent with the terms of Order No. 20193²; (3) contributors' contribution to the TRS fund shall be the product of their gross operating revenue from the retail provision of intrastate telecommunications services during the preceding calendar year, which is subject to investigation by the commission, and a contribution factor determined annually by the commission, consistent with the terms of Order No. 20193; and (4) the annual TRS funding period commences July 1 and ends June 30 of each year.

III.

Discussion

The Commission received no comments or objections to the proposals in Order No. 21730. Upon review, the commission finds the proposals in Order No. 21730 to be reasonable and in the public interest. Accordingly, the carrier contribution factor for the Period shall be 0.0010 and the projected TRS fund size, for the Period shall be established at approximately \$680,000.

²The commission specifically excluded payphone providers from contributing to the TRS fund.

III.

Orders

THE COMMISSION ORDERS:

1. The contribution factor for the Period (July 1, 2005 to June 30, 2006) shall be 0.0010. The projected TRS fund size, for the Period, shall be approximately \$680,000.

2. Each carrier shall complete and submit a TRS Reporting Worksheet, attached to this Order as Exhibit "A".

3. Annual contributions are due July 26th; carriers who owe contributions \$1,200 or more may pay in twelve equal monthly installments, due on the 26th of each month, provided that they submit their TRS Reporting Worksheet by July 26th.


4. Carriers reporting \$10,000 or less in gross intrastate retail revenues shall contribute at least \$10.00 for the period July 1, 2005 to June 30, 2006.

5. Every carrier, except Commercial Mobile Radio Service ("CMRS") providers, shall comply with the 30-day notice requirement of HRS § 269-16(b) and HAR § 6-80-40(b) for any TRS surcharge imposed on its customers, both residential and business, to recover the amount of its contribution. CMRS providers shall place information on their TRS surcharges on their websites, consistent with Decision and Order No. 20890, filed on April 7, 2004, in Docket No. 03-0186.


6. Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058, is amended consistent with the terms and conditions of this decision and order. In all other respects, Order No. 20193 remains unchanged.

DONE at Honolulu, Hawaii MAY 31 2005.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kevin M. Katsura
Commission Counsel

05-0088.ah

State of Hawaii
Public Utilities Commission
Telecommunications Relay Services
Carrier Remittance Worksheet
For the Period July 1, 20__ - June 30, 20__

SECTION A		CARRIER IDENTIFICATION
Date:		
Company Name:		
Mailing Address:		
Email Address:		

SECTION B		REMITTANCE CALCULATION
1. Gross Revenues (Based on Prior Calendar Year) <small>(e.g., Current year is 20X2; Report revenues from 20X1) (Amount should match gross revenues reported for Hawaii PUC Fee purposes, HRS § 269-30)</small>		
2. Less: Revenue Adjustments (describe, see Section E)	<	>
3. Gross Intrastate Retail Revenues		
4. Hawaii TRS Contribution Factor	.001	
5. Gross Hawaii TRS Assessment (line 3 x line 4)		
6. Greater of line 5 or \$10.00 (minimum due)		
<p>If Line 6 is less than \$1,200, this is your annual contribution to the TRS Fund for the period beginning July 1st of the current year to June 30th of the following year. Please pay the amount on line 6, in full, by July 26th of the current year. Send your remittance with a copy of this worksheet to the address listed below.</p> <p>If Line 6 is \$1,200 or more, continue to line 7 below.</p>		

SECTION C		MONTHLY CONTRIBUTION
7. Divide line 6 by 12		
<p>Line 7 is your first monthly contribution to the TRS Fund, for the period beginning July 1st of the current year to June 30th of the following year. Send your 1st monthly remittance with a copy of this worksheet to the address listed below. Please pay the amount on line 7 by July 26th. NECA Services, Inc. will then send you a bill for the remaining eleven monthly payments.</p>		

SECTION D		CERTIFICATION	
<p>Under penalties as provided by law, I certify that I am duly authorized to verify the foregoing information contained herein and that the information is true and correct to the best of my knowledge and belief.</p>			
Date	Officer Name	Officer Signature	Officer Title
Date	Contact Name	Contact Phone	Contact Title

<p style="text-align: center;">Questions???</p> <p>Hawaii TRS Administrator NECA Services, Inc. 80 S. Jefferson Road Whippany, NJ 07981 Phone (973) 884-8011 Fax (973) 599-6504</p>	<p style="text-align: center;">Make checks payable to "Hawaii TRS" and send with worksheet to: Attn: Hawaii TRS Administrator NECA Services, Inc. 80 S. Jefferson Road Whippany, NJ 07981</p>
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SECTION E DETAILS CONCERNING REVENUE ADJUSTMENT(S)

If revenue adjustment(s) are not explained here, amounts deducted will be disallowed and proposed assessments may be prepared against you.

Describe amounts deducted from Gross Revenues to obtain Gross Intrastate Retail Revenues (list):	Amount
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
TOTAL	

Exhibit "A"

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21847 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

MAGGIE SCHOOLAR
GOVERNMENT ACCOUNT EXECUTIVE
SPRINT COMMUNICATIONS
1321 Rutherford Lane, Suite 120
Austin, TX 78753



Karen Higashi

DATED: MAY 31 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22158 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

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COVINGTON & BURLING
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Washington, DC 20004-2401

ROBERT CARSON GODBEY, ESQ.
GODBEY GRIFFITHS REISS CHONG
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Pauahi Tower
Honolulu, HI 96813



Karen Higashi

DATED: December 5, 2005